

**Introduced by Senator Margett**

February 18, 2005

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An act to add Chapter 6.5 (commencing with Section 12899) to Part 6 of Division 6 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Margett. State Water Project: rights-of-way.

(1) Under existing law, the Department of Water Resources operates the State Water Resources Development System (State Water Project).

This bill would establish a permit program, administered by the department, for encroachments on State Water Project rights-of-way. The bill, *with a certain exception*, would make any person who makes an alteration, improvement, encroachment, or excavation within the right-of-way acquired for the State Water Resources Development System, without a permit, guilty of a misdemeanor. *By creating a new crime, the bill would impose a state-mandated local program.* The bill would provide for civil penalties, and, *with certain exceptions*, would also make it unlawful for any person to drain water, or permit water to be drained, from the person's lands onto the State Water Resources Development System right-of-way or to obstruct any natural watercourse *or to store or distribute water* in a described manner. ~~By creating new crimes, this bill would impose a state-mandated local program.~~ *The bill would allow persons to continue certain authorized encroachments.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The State Water Resources Development System serves a*  
4     *critical public infrastructure function by providing water to*  
5     *California's residents, businesses, farms, environment, and other*  
6     *users.*

7     *(b) It is vital for the Department of Water Resources to be able*  
8     *to protect this infrastructure from encroachments that may*  
9     *threaten the integrity, or interfere with the operation and*  
10    *maintenance, of this system.*

11    *(c) The Department of Water Resources needs the authority to*  
12    *control encroachments while respecting the property rights of*  
13    *others. However, certain encroachments that are located within*  
14    *the department's right-of-way may need to be removed because*  
15    *those encroachments threaten the integrity of the State Water*  
16    *Resources Development System or interfere with its operation*  
17    *and maintenance.*

18    ~~SECTION 1.~~

19    *SEC. 2. Chapter 6.5 (commencing with Section 12899) is*  
20    *added to Part 6 of Division 6 of the Water Code, to read:*

21  
22        CHAPTER 6.5. STATE WATER RESOURCES DEVELOPMENT  
23        SYSTEM RIGHTS-OF-WAY

24  
25    12899. The following definitions govern the construction of  
26    this chapter:

27    (a) "State Water Resources Development System" means the  
28    State Water Resources Development System as described in  
29    Section 12931, including, but not limited to, all portions of the  
30    project authorized pursuant to the Central Valley Project Act  
31    (Part 3 (commencing with Section 11100)) and additions thereto.

1 (b) “Encroachment” means any installation of any tower, pole,  
2 pipe, fence, building, structure, object, or improvement of any  
3 kind or character that is placed in, on, under, or over any portion  
4 of the State Water Resources Development System or other use  
5 of the department’s right-of-way, including the alteration of the  
6 ground surface elevation by more than one foot, or the planting  
7 of trees, vines, or other vegetation *on the department’s*  
8 *right-of-way* that may pose a threat to the physical integrity of  
9 any facility of the State Water Resources Development System or  
10 that could interfere with the department’s rights with regard to  
11 access, inspection, repair, or the operation and maintenance of  
12 any State Water Resources Development System facility.

13 (c) “Person” means any person, firm, partnership, association,  
14 corporation, other business entity, nonprofit organization, or  
15 governmental entity.

16 (d) “Right-of-way” means any property interest acquired by  
17 the department for State Water Resources Development System  
18 purposes, including but not limited to, an easement, license,  
19 permit, joint use agreement, or fee ownership.

20 12899.1. (a) ~~No~~ *Except as provided by Section 12899.8, no*  
21 person shall make any alteration, improvement, encroachment, or  
22 excavation within the right-of-way acquired for the State Water  
23 Resources Development System, without first obtaining the  
24 written permission of the department.

25 (b) Any person proposing to make an alteration, improvement,  
26 encroachment, or excavation within the right-of-way acquired for  
27 the State Water Resources Development System shall submit an  
28 application to the department on a form prescribed by the  
29 department, along with other reports, studies, and analyses as  
30 required by the department.

31 (c) The department may issue a written permit, in accordance  
32 with this chapter, authorizing the permittee to do any act that is  
33 ~~consistent with the convenient execution,~~ *not inconsistent with*  
34 *the* functioning, operation, maintenance, enlargement, and  
35 rehabilitation of any portion of the facilities of the State Water  
36 Resources Development System.

37 (d) By issuing the permits, the department is not responsible  
38 for the competence or reliability of the permittee or the  
39 encroachment.

1 (e) The department shall approve or deny an application for an  
2 encroachment permit not later than 60 days from the date of  
3 receipt of the complete application, as determined by the  
4 department. An application for a permit is complete when all  
5 application requirements and other statutory requirements,  
6 including, but not limited to, the California Environmental  
7 Quality Act (Division 13 (commencing with Section 21000) of  
8 the Public Resources Code), have been met. Not later than 30  
9 days from the date on which the application is received, the  
10 department shall determine whether an application is complete.  
11 *The department shall not unreasonably deny an application for a*  
12 *permit.* If the department denies an application for a permit, it  
13 shall provide an explanation of the reason for the denial at the  
14 time of notifying the applicant of the denial.

15 (f) ~~Any~~ *Except as provided by Section 12899.8, any* person  
16 who makes an alteration, improvement, encroachment, or  
17 excavation within the right-of-way acquired for the State Water  
18 Resources Development System, without a permit, is guilty of a  
19 misdemeanor.

20 12899.2. (a) Any act performed under the authority of a  
21 permit issued pursuant to this chapter shall be in accordance with  
22 the applicable provisions of this chapter and the terms and  
23 conditions of the permit.

24 (b) The department may prescribe requirements in the permit,  
25 including a requirement that the permittee pay the entire expense  
26 of restoring the affected State Water Resources Development  
27 System facilities to a condition equivalent to that before the work  
28 was performed, and requirements relating to the location and  
29 manner in which the work shall be performed, as determined by  
30 the department to be necessary for the protection of the  
31 department's facilities.

32 (c) Any permit issued to a permittee shall include a provision  
33 that requires the permittee to relocate or remove the  
34 encroachment in the event the future repair, rehabilitation, or  
35 improvement of the State Water Resources Development System  
36 requires the relocation or removal of the encroachment at the sole  
37 expense of the permittee.

38 (d) The department may charge an application processing and  
39 review fee for ~~use of a permit to use~~ the right-of-way.

1 (e) The department may inspect and supervise the work  
2 performed under any permit issued under this chapter, in which  
3 event the permittee shall pay the reasonable cost of that  
4 inspection and supervision to the department, *not to exceed the*  
5 *amount estimated by the department at the time of issuing the*  
6 *permit or commencement of work. If the actual costs exceed the*  
7 *estimated costs, an additional fee may be required by the*  
8 *department before final permit approval or at the end of the*  
9 *inspection. If the actual costs are less than the estimated costs,*  
10 *the department shall refund the difference.*

11 (f) Before granting a permit under this chapter, the department  
12 may require any applicant to provide proof of insurance naming  
13 the department as an additional insured in an amount reasonably  
14 necessary to protect the state's interest.

15 (g) Before granting a permit under this chapter, the department  
16 may require any applicant, other than a county, city, city and  
17 county, or public agency that is authorized by law to establish  
18 and maintain any works or facilities within the department's  
19 right-of-way, to file with the department a satisfactory bond  
20 payable to the department in an amount that the department  
21 determines to be sufficient, conditioned on the proper compliance  
22 by the permittee with this chapter. The department may require a  
23 bond from a county, city, city and county, or public agency that,  
24 prior to submitting an application, failed to comply with this  
25 chapter or with the conditions of a previous permit.

26 12899.3. No corporation has any franchise rights within the  
27 department's right-of-way, and no county, city, or city and  
28 county has any right to grant a franchise within that right-of-way.  
29 This section does not apply to a State Water Resources  
30 Development System right-of-way located within city, county, or  
31 city and county public roadways.

32 12899.4. The department may delegate, to any entity that has  
33 a contract with the department pursuant to Section 11625, any of  
34 the department's powers, duties and authority, other than  
35 approval, under this chapter as to any facility of the State Water  
36 Resources Development System that primarily benefits that  
37 entity, and may withdraw that delegation of authority.

38 12899.5. (a) *Except as provided by Section 12899.8, if any*  
39 *encroachment exists within the department's right-of-way, the*

1 department may require the removal of the encroachment in the  
2 manner provided in this section.

3 (b) Except as provided in subdivision ~~(e)~~ (e), notice shall be  
4 given to the owner, occupant, or person in possession of the  
5 encroachment, or to any other person causing or permitting the  
6 encroachment to exist, by serving a notice including a demand  
7 for the immediate removal of the encroachment from within the  
8 right-of-way. The notice shall describe the encroachment with  
9 reasonable certainty as to its character and location. In lieu of  
10 service upon the person, service of the notice may also be made  
11 by registered mail and posting for a period of five days, a copy of  
12 the notice on the encroachment described in the notice. In the  
13 case of an owner, occupant or person in possession, who is not  
14 present in the county, the notice may be given to an agent in lieu  
15 of service by mailing and posting.

16 (c) The department may ~~immediately~~ remove from the State  
17 Water Resources Development System any right-of-way  
18 encroachment that meets *both of* the following criteria:

19 (1) Not later than ~~five~~ 60 days from the date on which a notice  
20 was given pursuant to subdivision (b), the owner, occupant, or  
21 person in possession of the encroachment *has not asserted a*  
22 *right to be in possession consistent with Section 12899.8 and has*  
23 *not removed, or commenced to remove in a diligent manner, the*  
24 *encroachment.*

25 (2) The encroachment obstructs, threatens, or prevents the  
26 proper operation, maintenance, or rehabilitation of the State  
27 Water Resources Development System.

28 (d) *The department may immediately remove from the State*  
29 *Water Resources Development System any right-of-way*  
30 *encroachment that meets both of the following criteria:*

31 (1) *Not later than five days from the date on which a notice is*  
32 *given pursuant to subdivision (b), the owner, occupant, or person*  
33 *in possession of the encroachment has not asserted a right to be*  
34 *in possession consistent with Section 12899.8 and has not*  
35 *removed, or commenced to remove in a diligent manner, the*  
36 *encroachment.*

37 (2) *The encroachment poses an imminent threat to the*  
38 *integrity of one or more features of the State Water Resources*  
39 *Development System.*

(e) In the case of an emergency, the department has the authority to take any action necessary to avert, alleviate, repair, or mitigate any threat to the State Water Resources Development System. For the purposes of this chapter, “emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

(f) If the department removes any encroachment upon the failure of the owner to comply with the notice pursuant to this section, ~~it the department~~ may recover the expense of the removal, costs and expenses of suit, including attorneys fees, and, in addition, ~~the sum of five thousand dollars (\$5,000) for each day~~ the sum of one thousand dollars (\$1,000) for each day the encroachment remains after the expiration of the five days from the service of the notice.

~~(e)~~  
(g) If the owner, occupant, or person in possession of the encroachment, or person causing or suffering the encroachment to exist, or the agent of any of these parties, disputes or denies the existence of the encroachment, *asserts a right to be in possession consistent with Section 12899.8*, or refuses to remove or permit the removal of the encroachment, the department may commence, in any court of competent jurisdiction, an action to abate the encroachment as a public nuisance. If judgment is recovered by the department, it may, in addition to having the encroachment adjudged a nuisance and abated, ~~recover five thousand dollars (\$5,000)~~ one thousand dollars (\$1,000) for each day the encroachment remains after the service of the notice in the manner provided in subdivision (b), and may also recover the expense of that removal, and costs and expenses of the suit, including attorneys fees.

12899.6. ~~It~~ (a) Unless a person is otherwise authorized, by permit or agreement, to do so, it is unlawful for any person to do any of the following acts:

~~(a)~~  
(1) Drain water, or permit water to be drained, from the person’s lands onto the State Water Resources Development System right-of-way by any means, which results in damage to

1 the system or the department's right-of-way, *except where the*  
2 *water naturally drains onto the department's right-of-way.*

3 ~~(b)~~

4 (2) Obstruct any natural watercourse in a manner that does any  
5 of the following:

6 ~~(1)~~

7 (A) Prevents, impedes, or restricts the natural flow of waters  
8 from any portion of the department's right-of-way into and  
9 through the watercourse or State Water Resources Development  
10 System cross drainage structures, unless other adequate and  
11 proper drainage is provided.

12 ~~(2)~~

13 (B) Causes waters to be impounded within the department's  
14 right-of-way that damages the State Water Resources  
15 Development System or the department's right-of-way, *except*  
16 *where the water naturally drains onto the department's*  
17 *right-of-way.*

18 ~~(3)~~

19 (C) Causes interference with, or damages or makes hazardous  
20 the operation, maintenance, and rehabilitation of the State Water  
21 Resources Development System.

22 ~~(e)~~

23 (3) Stores or distributes water for any purpose so as to permit  
24 it to overflow onto, to saturate by seepage, or to obstruct or  
25 damage any portion of the State Water Resources Development  
26 System or the department's right-of-way.

27 ~~(d)~~

28 (b) When notice is given by the department, in the manner  
29 provided in Section 12899.5, to any person permitting ~~the a~~  
30 condition to exist, *as described in subdivision (a)* the person shall  
31 immediately cease and discontinue the diversion of waters or  
32 shall discontinue and prevent the drainage, seepage, or overflow  
33 and shall repair, or pay for the repair, of any damage to the State  
34 Water Resources Development System or the department's  
35 right-of-way. *The person to whom the notice is provided may*  
36 *challenge, administratively in accordance with regulations*  
37 *adopted pursuant to Section 12899.9, or in a court of competent*  
38 *jurisdiction, the propriety of the determination by the*  
39 *department.*

40 ~~(e)~~



1 (c) If any person is notified pursuant to subdivision (d) and  
2 fails, neglects, or refuses to cease and discontinue the diversion,  
3 drainage, seepage, or overflow of the waters or to make or pay  
4 for the repairs, the department may make repairs and perform  
5 work as it determines necessary to prevent the further drainage,  
6 diversion, overflow, or seepage of the waters.

7 ~~(f)~~

8 (d) The department may recover in an action at law, in any  
9 court of competent jurisdiction, the amount expended for those  
10 repairs and work, and in addition, the sum of ~~five thousand~~  
11 ~~dollars (\$5,000)~~ *one thousand dollars (\$1,000)* for each day the  
12 drainage, diversion, overflow, or seepage of the waters is  
13 permitted to continue, after the service of the notice in the  
14 manner specified in this chapter, together with the costs and  
15 expenses, including attorneys fees, incurred in the action.

16 12899.7. Any person who by any means willfully or  
17 negligently injures or damages any feature of the State Water  
18 Resources Development System or the department's right-of-way  
19 is liable for necessary repairs, and the department may recover in  
20 an action at law the amount expended for the repairs, together  
21 with the costs and expenses, including attorneys fees, incurred in  
22 that action.

23 12899.8. (a) Notwithstanding any other provision of this  
24 chapter, and except as otherwise provided in an agreement  
25 between the department and landowner or  
26 predecessor-in-interest, any person owning a legal real property  
27 interest over a portion of the State Water Resources Development  
28 System right-of-way, *or who has an agreement with the*  
29 *department for the construction, operation, and maintenance of*  
30 *an encroachment*, is not required to obtain a permit from the  
31 department for exercising their property *or other* rights, but shall  
32 submit their plans to the department for review and comment  
33 before undertaking any *additional* work within the department's  
34 right-of-way. A ~~person's legal real property interests shall be~~  
35 ~~determined by the appropriate recorded documents. The~~  
36 ~~department shall respond not later than 60 days from the date of~~  
37 ~~receipt of the plans.~~

38 ~~(b) Any holder of a current State Water Resources~~  
39 ~~Development System encroachment permit on January 1, 2007,~~  
40 ~~may continue the authorized encroachment pursuant to the terms,~~

1 ~~conditions, and limitations of that permit.~~ *person's legal real*  
2 *property or other interests shall be determined by the department*  
3 *upon the review of the appropriate document, agreement, or*  
4 *reservation of rights. The department shall respond not later*  
5 *than 30 days from the date of the receipt of the plans.*

6 *(b) Notwithstanding any other provision of this chapter, any*  
7 *holder of a current State Water Resources Development System*  
8 *encroachment permit on January 1, 2007, or a person who has*  
9 *an agreement with the department for the construction,*  
10 *operation, and maintenance of an encroachment as of that date,*  
11 *may continue the authorized encroachment pursuant to the terms,*  
12 *conditions, and limitations of that permit or agreement.*

13 12899.9. The department may adopt ~~rules and~~ regulations to  
14 implement this chapter, *including regulations that provide for the*  
15 *filing of an application for a permit, related administrative*  
16 *review and inspection, the imposition of permit fees and permit*  
17 *terms and conditions, an administrative appeal process, and a*  
18 *process for administrative review and regulation of existing*  
19 *encroachments in accordance with this chapter.*

20 ~~SEC. 2.~~

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the  
26 penalty for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition of a  
28 crime within the meaning of Section 6 of Article XIII B of the  
29 California Constitution.